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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91161969
Party	Plaintiff RITZ-CARLTON HOTEL COMPANY, LLC, THE RITZ-CARLTON HOTEL COMPANY, LLC, THE 3414 PEACHTREE ROAD, N.E., STE 300 ATLANTA, GA 30326
Correspondence Address	DOUGLAS R. BUSH ARENT FOX KINTNER PLOTKIN & KAHN, PLLC 1050 CONNECTICUT AVE NW WASHIINGTON, DC 20036-5339
Submission	Stipulated Protective Order
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

THE RITZ-CARLTON HOTEL COMPANY, L.L.C.,	:	
	:	
Opposer,	:	
	:	
v.	:	Opp. No. 91161969
	:	
ROBERT B. WILCOX,	:	
	:	
Applicant.	:	

STIPULATED PROTECTIVE ORDER

WHEREAS, in the course of this Opposition Proceeding (the “Proceeding”), the parties may seek disclosure of information, or seek to disclose information, which a party regards as being of a confidential, trade secret, proprietary, technical, commercial, or financial nature (hereinafter collectively referred to as “CONFIDENTIAL INFORMATION”); and

WHEREAS, the parties desire to protect the confidentiality of such “CONFIDENTIAL INFORMATION” despite such disclosure.

IT IS HEREBY STIPULATED by and between the parties hereto, through their respective counsel, pursuant to Federal Rule of Civil Procedure 26(c), that the following shall govern the disclosure of “CONFIDENTIAL INFORMATION” in this Proceeding:

1. All originals or copies of transcripts of depositions, exhibits, answers to interrogatories and requests for admissions, and all documents, materials, tangible things and information obtained by inspection of files or facilities or by production of documents (hereinafter collectively referred to as “Information”) which set forth, refer to, or contain any “CONFIDENTIAL INFORMATION,” may be designated by the party producing the Information either as “CONFIDENTIAL-OUTSIDE COUNSEL’S EYES ONLY” or “CONFIDENTIAL.”

(i) When used in this Stipulated Protective Order, the term “CONFIDENTIAL” documents and information shall mean documents and information which the producing party in good faith believes constitute non-public information, the disclosure of which the producing party has a reasonable belief could injure the producing party or any third party.

(ii) When used in this Stipulated Protective Order, “CONFIDENTIAL-OUTSIDE COUNSEL’S EYES ONLY” documents and information means documents and information which the producing party in good faith believes reveal significant technical or business advantages or financial information otherwise unavailable to the public, the disclosure of which would cause the producing party competitive harm, and/or confidential information of a third party to this Proceeding which the third party views as sensitive and does not generally make such information publicly available.

2. Documents, material or information that are designated as “CONFIDENTIAL” or “CONFIDENTIAL-OUTSIDE COUNSEL’S EYES ONLY” are referred to hereafter as “CONFIDENTIAL INFORMATION.” Notwithstanding anything to the contrary contained in this Stipulated Protective Order, neither party shall have any obligation with respect to any document, material or information obtained from a third party designated “CONFIDENTIAL” or “CONFIDENTIAL-OUTSIDE COUNSEL’S EYES ONLY” by any party or witness, or any portion thereof, which the receiving party can establish by competent proof:

(i) Is or becomes generally known to third party companies engaged in the same or similar businesses as the parties hereto on a non-confidential basis, through no wrongful act of the receiving party;

(ii) Is lawfully obtained by the receiving party from a third party without any obligation to maintain the information proprietary or confidential;

(iii) Is known prior to disclosure to the receiving party without any obligation to keep it confidential;

(iv) Is independently developed by the receiving party without reference to the disclosing party's document, material or information designated "CONFIDENTIAL" or "CONFIDENTIAL-OUTSIDE COUNSEL'S EYES ONLY";

(v) Is the subject of a written Agreement whereby the disclosing party consents to the disclosure of such document, material or information designated "CONFIDENTIAL" or "CONFIDENTIAL-OUTSIDE COUNSEL'S EYES ONLY";

(vi) Is at the time of its disclosure in this case demonstrably a part of the public domain;
or

(vii) After the time of disclosure in this case becomes demonstrably part of the public domain, through no wrongful act of the receiving party.

3. If any party believes that a designation of any document, material or information by any other party as "CONFIDENTIAL INFORMATION" is unwarranted or that objection to disclosure to any person is unreasonable, it may so inform the designating party in writing. Upon receiving such written objection, the interested parties or person shall negotiate in good faith to resolve their differences, and upon failing to reach agreement at the completion of such negotiations, the party objecting to the designation or objection to disclosure may file a motion with the Board for a ruling on its objection. No disclosure of any documents, material or information designated as "CONFIDENTIAL INFORMATION" shall be made before the Board decides that such designation or objection to disclosure was improper. In any proceeding challenging the propriety of the designation of any document, information or material as "CONFIDENTIAL INFORMATION," the party who has designated the document, material or information as "CONFIDENTIAL" or "CONFIDENTIAL-OUTSIDE COUNSEL'S EYES ONLY" shall bear the burden of establishing the propriety of that designation.

In ruling upon such a motion, if a producing or requesting party is found by the Board not to have acted in good faith in making or opposing a designation of "CONFIDENTIAL INFORMATION," or in making or opposing an objection to disclosure, the party so found shall be liable for the reasonable cost and attorneys' fees incurred in successfully challenging or defending the motion.

4. Any information designated as "CONFIDENTIAL-OUTSIDE COUNSEL'S EYES ONLY" or as "CONFIDENTIAL," and all information derived therefrom (excluding such information as is derived lawfully from an independent source) shall not be disclosed to anyone other than an outside attorney of record (as specifically named below) for a party except as provided in Paragraphs 5 and 6 below, shall be used only for the purposes of this Proceeding, and shall not be used for any business, financial or other purpose whatsoever.

5. Information designated as "CONFIDENTIAL-OUTSIDE COUNSEL'S EYES ONLY" shall not be given, shown, made available or communicated in any way to any person or entity, including any party or any employee of any party, with the exception of an outside attorney of record for any party in this Proceeding. The designation "attorney of record" shall include the members of the respective law firms representing the parties and their employed associates, paralegals, clerks and secretaries. Attorney of record does not include in-house counsel for any party. If an attorney of record desires to give, show, make available or communicate to any person, including any party or an employee of any party, any Information designated as "CONFIDENTIAL-OUTSIDE COUNSEL'S EYES ONLY," said attorney of record shall first disclose the identity of such person to the attorney of record for the party who designated the Information. The attorney of record who designated the Information shall have seven (7) days to object to the disclosure. If an objection is made, the attorney of record objecting will have seven (7) days to

seek relief from the Board. Each person to whom the Information is to be given, shown, made available or communicated must execute and deliver to the attorney of record for the designating party a written instrument agreeing not to use or to disclose to anyone any of the contents of the Information received and to be bound by the terms of this Order. Only after these conditions have been fully satisfied may the Information be given, shown, made available or communicated to any person other than an attorney of record without further order of the Board in this Proceeding.

6. Information designated as “CONFIDENTIAL INFORMATION” shall not be given, shown, made available or communicated in any way to any person or entity except to the following:

- a. no more than five in-house attorneys or other designated employees for each party who reasonably need to review the “CONFIDENTIAL INFORMATION” in connection with this Proceeding, or who may be required to give testimony in this Proceeding;
- b. outside attorneys of record for the parties and their employees; and
- c. Experts retained by a party in connection with this litigation and who execute and deliver to that party’s attorney of record an affidavit in the form annexed hereto as Exhibit A, agreeing not to use or disclose any “CONFIDENTIAL INFORMATION” and agreeing to be bound by the terms of this Order.

“CONFIDENTIAL INFORMATION” may not be disclosed to any designated employee of a party, unless and until each such employee shall execute and deliver to that party’s attorney of record an affidavit, in the form annexed hereto as Exhibit A, agreeing not to use or to disclose any “CONFIDENTIAL INFORMATION” and agreeing to be bound by the terms of this Order. Only after the foregoing conditions have been fully satisfied may the “CONFIDENTIAL INFORMATION” be given, shown, made available or communicated to any person without further order of the Board in this Proceeding.

7. Any Third Party shall have the right, consistent with the limitations imposed by paragraph 1(i) and (ii), to designate any documents produced by a third party in this Proceeding as “CONFIDENTIAL” or as “CONFIDENTIAL-OUTSIDE COUNSEL’S EYES ONLY.”

8. The provisions of this Stipulated Protective Order shall not terminate at the conclusion of this Proceeding, and the Board shall retain jurisdiction to resolve any dispute concerning the use of documents or information hereunder. After the conclusion of this Proceeding, including all appeals, any documents designated “CONFIDENTIAL” or as “CONFIDENTIAL-OUTSIDE COUNSEL’S EYES ONLY” and all copies of same (other than exhibits of record), shall, at the bequest of the producing party, be returned to the producing party or be certified as having been destroyed.

9. A file shall be maintained by the attorneys of record of all written agreements signed by persons to whom materials designated as “CONFIDENTIAL-OUTSIDE COUNSEL’S EYES ONLY” and as “CONFIDENTIAL” have been given.

10. Information shall be designated as “CONFIDENTIAL” and “CONFIDENTIAL-OUTSIDE COUNSEL’S EYES ONLY” by the placement of a stamp or marking in those words on each page of the document containing the Information being so designated.

11. The inadvertent or unintentional disclosure by the producing party of “CONFIDENTIAL INFORMATION” without a designation as such shall not be deemed a waiver in whole or in part of that party’s claim of confidentiality, either as to the specific information disclosed or as to any other information relating thereto or on the same or related subject matter.

12. If, during the course of any deposition, an attorney of record for a party asserts that an answer to a specific inquiry is subject to the designation “CONFIDENTIAL-OUTSIDE COUNSEL’S EYES ONLY,” said inquiry shall be answered in the presence of outside attorneys of record only and shall be sealed and subject to disclosure under the same terms and provisions as set forth herein.

13. All testimony taken at deposition shall initially be treated as “CONFIDENTIAL-OUTSIDE COUNSEL’S EYES ONLY.” Each party shall then have ten (10) days from receipt of the deposition transcript to designate portions (if any) of the transcript that the party wishes to maintain as “CONFIDENTIAL” or as “CONFIDENTIAL-OUTSIDE COUNSEL’S EYES ONLY.” Any portion of a deposition transcript not so designated need not be treated as “CONFIDENTIAL INFORMATION” after the period for designation has expired.

14. Interrogatory answers and answers to requests for admissions designated as “CONFIDENTIAL” or as “CONFIDENTIAL-OUTSIDE COUNSEL’S EYES ONLY” shall be delivered to the attorney of record propounding the interrogatories or requests without being filed with the Board unless required in any further proceedings herein. When documents so designated and/or other matters of the same or similar nature are the subject of inquiry at depositions, the portion of the transcript which sets forth or contains information about such, together with such documents, shall be sealed and shall not be filed with the Board unless required in any further proceedings herein.

15. The parties further agree that utilization of documents containing “CONFIDENTIAL INFORMATION” at any trial or testimony stage of this proceeding will not affect the protections given to those documents by this Stipulated Protective Order.

16. If any party wishes to file copies of “CONFIDENTIAL INFORMATION” as attachments to motions, briefs, or other pleadings that are to be filed with the Board such “CONFIDENTIAL INFORMATION” will be filed with the Board under seal, endorsed with the legend: “Confidential -- Filed Under Seal -- Not to be Opened Except by Authority of the Board.”

17. Any court reporter who transcribes the testimony in this Proceeding at a deposition shall agree, before transcribing any such testimony, that all “CONFIDENTIAL-OUTSIDE COUNSEL’S EYES ONLY” and “CONFIDENTIAL” testimony is and shall remain confidential and

shall not be disclosed except to the attorneys of record and any other person who is present while such testimony is being given; that copies of any transcript, reporter's notes or any other transcription records of any such testimony shall be retained in absolute confidentiality and safekeeping by such shorthand reporter or shall be delivered to the attorney of record or filed with the Board.

18. Papers filed herein by the attorneys of record shall avoid, whenever possible, any disclosure of information which is "CONFIDENTIAL-OUTSIDE COUNSEL'S EYES ONLY" or "CONFIDENTIAL" or of the same or similar nature.

19. Any "CONFIDENTIAL-OUTSIDE COUNSEL'S EYES ONLY" or "CONFIDENTIAL" information may be used by any party at any trial of this Proceeding subject to the rules of evidence, the requirements of this Order, or such other Order as the Board may enter.

20. The designation by counsel for the disclosing party of any document, material or information as constituting or containing trade secrets or other confidential information is intended solely to facilitate the preparation and trial of this case, and such designation shall not be construed in any way as an admission or agreement by any party that the designated disclosure constitutes or contains any trade secret or confidential information.

21. Upon the final disposition of this Proceeding: (a) each attorney of record shall promptly return to the party or witness from whom obtained, all items which have been marked "CONFIDENTIAL-OUTSIDE COUNSEL'S EYES ONLY" or "CONFIDENTIAL", all copies made thereof, including any of said items or copies thereof, and all non-privileged writings related thereto, including but not limited to notes, analyses, memoranda or reports provided to any other persons; and (b) all papers filed with the Board by either party shall, upon request, be returned to the party filing the same. However, each attorney of record may retain one record copy of all such items as described in part (b) of this paragraph upon notice to the other attorneys of record of such retention and subject to the terms of this Order.

22. Nothing herein shall prohibit the disclosure of a document, material or information designated as “CONFIDENTIAL INFORMATION” to the person the document identifies as an author or addressee or copy recipient of such document.

23. Persons may be interviewed or examined by any party concerning “CONFIDENTIAL INFORMATION,” including the disclosure thereof, when that person had prior knowledge of the “CONFIDENTIAL INFORMATION.”

24. The inadvertent disclosure of privileged matter by a producing party or its counsel shall not constitute a waiver of any applicable privilege or immunity. If matter which is privileged or immune from disclosure is inadvertently disclosed, the producing party shall give notice promptly after discovery of the inadvertent disclosure that the matter is privileged and the receiving party shall immediately return the designated material upon such demand. Any person wishing to bring the issue of privilege to the Board may do so after the material has been returned. The production of any document, material or information by any party under this Order shall be without prejudice to any claim that the material is privileged or immune from discovery and no party shall be held to have waived any rights by said production. In addition, the disclosure of “CONFIDENTIAL INFORMATION” does not constitute a waiver of any trade secrets or intellectual property rights to or in such information.

25. Nothing in this Stipulated Protective Order shall bar or otherwise restrict counsel for a party from rendering advice to his or her client with respect to this Proceeding and, in the course thereof, referring to or relying upon his examination of documents, material or information designated “CONFIDENTIAL-OUTSIDE COUNSEL’S EYES ONLY”; provided, however, that in rendering such advice and in otherwise communicating with its client, counsel shall not make any disclosure of such “CONFIDENTIAL-OUTSIDE COUNSEL’S EYES ONLY” document, material or information.

26. To facilitate the inspection of large volumes of documents without the need to first affix a designation to the face of each, the producing party may, at its option, permit counsel for the receiving party to initially inspect the documents for the purpose of selecting those to be copied, and the producing party need only thereafter affix the “CONFIDENTIAL” or “CONFIDENTIAL-OUTSIDE COUNSEL’S EYES ONLY” designation to the copies of the documents selected to be copied. In this event, the receiving party will treat all information learned in its initial inspection which is not contained in the copied documents as “CONFIDENTIAL-OUTSIDE COUNSEL’S EYES ONLY.”

28. In the event any person or party having possession, custody or control or knowledge of any “CONFIDENTIAL INFORMATION” receives a subpoena, other process or order to provide such “CONFIDENTIAL INFORMATION,” such person or party shall promptly notify counsel for the party that produced the “CONFIDENTIAL INFORMATION” and shall furnish a copy of such subpoena, other process or order by facsimile and overnight mail. The person or party in receipt of such a subpoena, other process or order shall cooperate with the producing party with respect to any procedure sought to be pursued by the producing party whose interests may be affected. The party asserting the confidential status of “CONFIDENTIAL INFORMATION” shall have the obligation of defending that status against the subpoena, other process or order. The person or party receiving the subpoena, other process or order shall be entitled to comply with it, except to the extent the producing party asserting the confidential status of the “CONFIDENTIAL INFORMATION” is successful in obtaining an order or quashing the subpoena, other process or order.

29. It is not the intent of the parties, nor the Board, that an attorney or law firm that acquires knowledge of (or is given access to) protected information pursuant to this order should thereby be disqualified from other representations adverse to the producing party solely because of such knowledge (or access).

30. Nothing in this Stipulated Protective Order shall prevent any party or non-party from seeking modification of this Stipulated Protective Order or from objecting to discovery which it believes to be otherwise improper.

31. This Order shall be without prejudice to the right of the parties to request additional protection under Rule 26(c), Fed. R. Civ. P., for discovery requests made hereafter by any party.

32. This Stipulated Protective Order shall be binding upon the parties hereto, regardless of whether or when it is entered as an Order of the Board.

STIPULATED TO AND AGREED.

THE RITZ-CARLTON HOTEL COMPANY, L.L.C.

By 

Printed Name **Kevin M. Kimball**

Title **Vice President**

Date **May 25, 2005**

ARENT FOX PLLC

By 

Michael A. Grow

Douglas R. Bush

Jason J. Mazur

Arent Fox PLLC

1050 Connecticut Avenue, NW

Washington, DC 20036

(202) 857-6389

Attorney for Opposer

Date **5 - 13 - 05**

ROBERT B. WILCOX

By 

Date 5-13-2005

LAW OFFICE OF RICHARD D. CLARKE

By 

Richard D. Clarke
3755 Avocado Blvd., #1000
La Mesa, CA 91941
(619) 670-1702

Attorney for Applicant

Date 13 MAY 2005

APPROVED:

Trademark Trial and Appeal Board

Date

EXHIBIT A

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

THE RITZ-CARLTON HOTEL COMPANY, L.L.C.,	:	
	:	
Opposer,	:	
	:	
v.	:	Opp. No. 91161969
	:	
ROBERT B. WILCOX,	:	
	:	
Applicant.	:	

The undersigned acknowledges having received and read the attached copy of the Stipulated Protective Order entered by the Trademark Trial and Appeal Board in the above referenced proceeding and hereby agrees, under penalty of law, to be bound by the terms of that Stipulated Protective Order and to maintain the confidentiality of any confidential documents or information received or reviewed in the course of this proceeding.

By: _____

Name: _____

Title: _____

Date: _____

CERTIFICATE OF SERVICE

It is hereby certified that a copy of the attached is being served upon Applicant's counsel Richard D. Clarke at Suite 1000, 3755 Avocado Boulevard, La Mesa, California 91941 by first class mail, postage prepaid, on June 9, 2005.


